Michael R. Lozeau (State Bar No. 142893)
Douglas J. Chermak (State Bar No. 233382)
LOZEAU DRURY LLP
410 12th Street, Suite 250
Oakland, CA 94607
Tel: (510) 836-4200
Fax: (510) 836-4205
E-mail: michael@lozeaudrury.com
doug@lozeaudrury.com

Shana Lazerow (State Bar No. 195491)
COMMUNITIES FOR A BETTER ENVIRONMENT
120 Broadway, Suite 2
Richmond, CA 94804
Tel: (510) 302-0430 x 18
Fax: (510) 302-0438
E-mail: slazerow@cbecal.org

Attorneys for Plaintiff
COMMUNITIES FOR A BETTER ENVIRONMENT

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

COMMUNITIES FOR A BETTER ENVIRONMENT, a non-profit corporation,

Plaintiff,

vs.

ALLIED WASTE SYSTEMS, INC., a corporation,

Defendant.

Case No. _____

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND CIVIL PENALTIES

(Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 to 1387)

COMMUNITIES FOR A BETTER ENVIRONMENT ("CBE"), a California non-profit corporation, by and through its counsel, hereby alleges:

I. JURISDICTION AND VENUE

1. This is a civil suit brought under the citizen suit enforcement provisions of the Federal Water Pollution Control Act, 33 U.S.C. § 1251, *et seq*. (the "Clean Water Act" or "the Act"). This Court has subject matter jurisdiction over the parties and the subject matter of this action pursuant to Section 505(a)(1)(A) of the Act, 33 U.S.C. § 1365(a)(1)(A), and 28 U.S.C. § 1331 (an action arising under the laws of the United States). The relief requested is authorized pursuant to 28 U.S.C. §§ 2201-02 (power to issue declaratory relief in case of actual controversy and further necessary relief based on such a declaration); 33 U.S.C. §§ 1319(b), 1365(a) (injunctive relief); and 33 U.S.C. §§ 1319(d), 1365(a) (civil penalties).

2. On March 8, 2017, CBE provided notice of Defendant's violations of the Act, and of Plaintiff's intention to file suit against Defendant, to the Administrator of the United States Environmental Protection Agency ("EPA"); the Administrator of EPA Region IX; the Executive Director of the State Water Resources Control Board ("State Board"); the Executive Officer of the California Regional Water Quality Control Board, San Francisco Bay Region ("Regional Board"); and to Defendant, as required by the Act, 33 U.S.C. § 1365(b)(1)(A). A true and correct copy of CBE's notice letter is attached as Exhibit A, and is incorporated by reference.

3. More than sixty days have passed since notice was served on Defendant and the State and federal agencies. Plaintiff is informed and believes, and thereupon alleges, that neither the EPA nor the State of California has commenced or is diligently prosecuting a court action to redress the violations alleged in this complaint. This action's claim for civil penalties is not barred by any prior administrative penalty under Section 309(g) of the Act, 33 U.S.C. § 1319(g).

4. Venue is proper in the Northern District of California pursuant to Section 505(c)(1) of the Act, 33 U.S.C. § 1365(c)(1), because the source of the violations is located within this judicial district. Pursuant to Local Rule 3-2(d), intradistrict venue is proper in Oakland, California, because the source of the violations is located within Contra Costa County.

II. INTRODUCTION

5. This complaint seeks relief for Defendant's discharges of polluted storm water from

Defendant's industrial facility located at 951 Waterbird Way Boulevard in Martinez, California ("Facility") in violation of the Act and National Pollutant Discharge Elimination System ("NPDES") Permit No. CAS000001, State Water Resources Control Board Water Quality Order No. 97-03-DWQ ("1997 Permit"), as renewed by Water Quality Order No. 2014-0057-DWQ ("2015 Permit") (the permits are collectively referred to hereinafter as the "Permit" or "General Permit"). Defendant's violations of the discharge, treatment technology, monitoring requirements, and other procedural and substantive requirements of the Permit and the Act are ongoing and continuous.'

6. With every significant rainfall event, millions of gallons of polluted storm water originating from industrial operations, such as those conducted by Defendant, pour into storm drains and local waterways. The consensus among agencies and water quality specialists is that storm water pollution accounts for more than half of the total pollution entering surface waters each year.

7. Industrial facilities, like Defendant's, that are discharging polluted storm water and non-storm water contribute to the impairment of downstream waters and aquatic-dependent wildlife. These contaminated discharges can and must be controlled for the ecosystem to regain its health.

III. PARTIES

8. Plaintiff CBE is an environmental justice organization organized under the laws of the State of California with a local office in Richmond, California. CBE has approximately 6,000 members who live, recreate and work in and around waters of the State of California, including the San Pablo Bay. Many of its members live and/or recreate in and around Contra Costa, Solano and Alameda counties. CBE is dedicated to empowering low-income communities of color that seek a voice in determining the health of their air, water and land. To further these goals, CBE actively seeks federal and state agency implementation of the Act and other laws and, where necessary, directly initiates enforcement actions. CBE brings this action on behalf of its members. CBE's interest in reducing Defendant's discharges of pollutants into San Pablo Bay, San Francisco Bay, and their tributaries and requiring Defendant to comply with the requirements of the General Permit are germane to its purposes. Litigation of the claims asserted and relief requested in this Complaint does not require the participation in this lawsuit of individual members of CBE.

9. CBE members reside in and around Pacheco Creek, San Pablo Bay, and San Francisco Bay and enjoy using those waters for recreation and other activities. One or more members of CBE use and enjoy the waters into which Defendant has caused, is causing, and will continue to cause, pollutants to be discharged. One or more members of CBE use those areas to to wade, bird watch, view wildlife, hike, bike, walk, and run, among other things. Defendant's discharges of pollutants threaten or impair each of those uses or contribute to such threats and impairments. Thus, the interests of one or more of CBE's members have been, are being, and will continue to be adversely affected by Defendant's failure to comply with the Clean Water Act and the Permit. The relief sought herein will redress the harms to Plaintiff caused by Defendant's activities.

10. Continuing commission of the acts and omissions alleged above will irreparably harm Plaintiff and one or more of its members, for which harm they have no plain, speedy or adequate remedy at law.

11. Defendant Allied Waste Systems, Inc. ("Allied Waste") is a corporation. Plaintiff is informed and believes and thereupon alleges that Allied Waste owns and operates the Facility that is the subject of this complaint.

IV. STATUTORY BACKGROUND

12. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant into waters of the United States, unless such discharge is in compliance with various enumerated sections of the Act. Among other things, Section 301(a) prohibits discharges not authorized by, or in violation of, the terms of an NPDES permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

13. Section 402(p) of the Act establishes a framework for regulating municipal and industrial storm water discharges under the NPDES program. 33 U.S.C. § 1342(p). States with approved NPDES permit programs are authorized by Section 402(p) to regulate industrial storm water discharges through individual permits issued to dischargers or through the issuance of a single, statewide general permit applicable to all industrial storm water dischargers. 33 U.S.C. § 1342(p).

14. Pursuant to Section 402 of the Act, 33 U.S.C. § 1342, the Administrator of the U.S.

EPA has authorized California's State Board to issue NPDES permits including general NPDES permits in California.

General Permit

15. The State Board elected to issue a statewide general permit for industrial storm water discharges. The State Board originally issued the General Permit on or about November 19, 1991. The State Board modified the General Permit on or about September 17, 1992. Pertinent to this action, the State Board reissued the General Permit on or about April 17, 1997 (the "1997 Permit"), and again on or about April 1, 2014 (the "2015 Permit"), pursuant to Section 402(p) of the Clean Water Act, 33 U.S.C. § 1342(p). The 1997 Permit was in effect between 1997 and June 30, 2015. The 2015 Permit went into effect on July 1, 2015. The 2015 Permit maintains or makes more stringent the same requirements as the 1997 Permit.

16. In order to discharge storm water lawfully in California, industrial dischargers must comply with the terms of the General Permit or have obtained and complied with an individual NPDES permit. 33 U.S.C. § 1311(a).

17. The General Permit contains several prohibitions. Effluent Limitation B(3) of the 1997 Permit and Effluent Limitation V(A) of the 2015 Permit require dischargers to reduce or prevent pollutants in their storm water discharges through implementation of the Best Available Technology Economically Achievable ("BAT") for toxic and nonconventional pollutants and the Best Conventional Pollutant Control Technology ("BCT") for conventional pollutants. Discharge Prohibition A(2) of the 1997 Permit and Discharge Prohibition III(C) of the 2015 Permit prohibit storm water discharges and authorized non-storm water discharges that cause or threaten to cause pollution, contamination, or nuisance. Receiving Water Limitation C(1) of the 1997 Permit and Receiving Water Limitation VI(B) of the 2015 Permit prohibit storm water discharges to any surface or ground water that adversely impact human health or the environment. Receiving Water Limitation C(2) of the 1997 Permit and Receiving Water Limitation VI(A) and Discharge Prohibition III(D) of the 2015 Permit prohibit storm water discharges that cause or contribute to an exceedance of any applicable water quality standards contained in Statewide Water Quality Control

Plan or the applicable Regional Board's Basin Plan.

18. In addition to absolute prohibitions, the General Permit contains a variety of substantive and procedural requirements that dischargers must meet. Facilities discharging, or having the potential to discharge, storm water associated with industrial activity that have not obtained an individual NPDES permit must apply for coverage under the State's General Permit by filing a Notice of Intent to Comply ("NOI"). Dischargers have been required to file NOIs since March 30, 1992.

19. Dischargers must develop and implement a Storm Water Pollution Prevention Plan ("SWPPP"). The SWPPP must describe storm water control facilities and measures that comply with the BAT and BCT standards. The General Permit requires that an initial SWPPP has been developed and implemented before October 1, 1992. The objective of the SWPPP requirement is to identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm water discharges and authorized non-stormwater discharges from the facility, and to implement best management practices ("BMPs") to reduce or prevent pollutants associated with industrial activities in storm water discharges and authorized non-storm water discharges. *See* 1997 Permit, § A(2); 2015 Permit, § X(C). These BMPs must achieve compliance with the General Permit's effluent limitations and receiving water limitations, including the BAT and BCT technology mandates. To ensure compliance with the General Permit, the SWPPP must be evaluated and revised as necessary. 1997 Permit, §§ A(9), (10); 2015 Permit, § X(B). Failure to develop or implement an adequate SWPPP, or update or revise an existing SWPPP as required, is a violation of the General Permit. 2015 Permit, Fact Sheet § I(1).

20. Sections A(3)-A(10) of the 1997 Permit set forth the requirements for a SWPPP. Among other requirements, the SWPPP must include: a pollution prevention team; a site map; a list of significant materials handled and stored at the site; a description of potential pollutant sources; an assessment of potential pollutant sources; and a description of the BMPs to be implemented at the facility that will reduce or prevent pollutants in storm water discharges and authorized non-stormwater discharges, including structural BMPs where non-structural BMPs are not effective.

Sections X(D) – X(I) of the 2015 Permit set forth essentially the same SWPPP requirements as the 1997 Permit, except that all dischargers are now required to develop and implement a set of minimum BMPs, as well as any advanced BMPs as necessary to achieve BAT/BCT, which serve as the basis for compliance with the 2015 Permit's technology-based effluent limitations and receiving water limitations. See 2015 Permit, § X(H). The 2015 Permit further requires a more comprehensive assessment of potential pollutant sources than the 1997 Permit; more specific BMP descriptions; and an additional BMP summary table identifying each identified area of industrial activity, the associated industrial pollutant sources, the industrial pollutants, and the BMPs being implemented. See 2015 Permit, §§ X(G)(2), (4), (5).

21. The 2015 Permit requires dischargers to implement and maintain, to the extent feasible, all of the following minimum BMPs in order to reduce or prevent pollutants in industrial storm water discharges: good housekeeping, preventive maintenance, spill and leak prevention and response, material handling and waste management, erosion and sediment controls, an employee training program, and quality assurance and record keeping. *See* 2015 Permit, § X(H)(1). Failure to implement all of these minimum BMPs is a violation of the 2015 Permit. See 2015 Permit, Fact Sheet § I(2)(o). The 2015 Permit further requires dischargers to implement and maintain, to the extent feasible, any one or more of the following advanced BMPs necessary to reduce or prevent discharges of pollutants in industrial storm water discharges: exposure minimization BMPs, storm water containment and discharge reduction BMPs, treatment control BMPs, and other advanced BMPs. See 2015 Permit, § X(H)(2). Failure to implement advanced BMPs as necessary to achieve compliance with either technology or water quality standards is a violation of the 2015 Permit. *Id.* The 2015 Permit also requires that the SWPPP include BMP Descriptions and a BMP Summary Table. *See* 2015 Permit, § X(H)(4), (5).

22. The General Permit requires dischargers to develop and implement an adequate written Monitoring and Reporting Program. The primary objective of the Monitoring and Reporting Program is to detect and measure the concentrations of pollutants in a facility's discharge to ensure compliance with the General Permit's discharge prohibitions, effluent limitations, and receiving

water limitations. As part of their monitoring program, dischargers must identify all storm water discharge locations that produce a significant storm water discharge, evaluate the effectiveness of BMPs in reducing pollutant loading, and evaluate whether pollution control measures set out in the SWPPP are adequate and properly implemented. The 1997 Permit required dischargers to collect storm water samples during the first hour of discharge from the first storm event of the wet season, and at least one other storm event during the wet season, from all storm water discharge locations at a facility. *See* 1997 Permit, § B(5). The 2015 Permit now mandates that facility operators sample *four* (rather than two) storm water discharges from all discharge locations over the course of the reporting year. *See* 2015 Permit, §§ XI(B)(2), (3).

23. Facilities are required to make monthly visual observations of storm water discharges. The visual observations must represent the quality and quantity of the facility's storm water discharges from the storm event. 1997 Permit, § B(7); 2015 Permit, § XI.A.

24. Section XI(B)(2) of the 2015 Permit requires that dischargers collect and analyze storm water samples from two qualifying storm events ("QSEs") during the first half of each reporting year (July 1 to December 31) and two QSEs during the second half of each reporting year (January 1 to June 30).

25. Under the 1997 Permit, facilities must analyze storm water samples for "toxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities." 1997 Permit, § B(5)(c)(ii). Under the 2015 Permit, facilities must analyze storm water samples for "[a]dditional parameters identified by the Discharger on a facility-specific basis that serve as indicators of the presence of all industrial pollutants identified in the pollutant source assessment." 2015 Permit, § XI(B)(6)(c).

26. Section B(14) of the 1997 Permit requires dischargers to include laboratory reports with their Annual Reports submitted to the Regional Board. This requirement is continued with the 2015 Permit. Fact Sheet, Paragraph O.

27. The 1997 Permit, in relevant part, requires that the Annual Report include an Annual Comprehensive Site Compliance Evaluation Report ("ACSCE Report"). 1997 Permit, § B(14). As

part of the ACSCE Report, the facility operator must review and evaluate all of the BMPs to determine whether they are adequate or whether SWPPP revisions are needed. The Annual Report must be signed and certified by a duly authorized representative, under penalty of law that the information submitted is true, accurate, and complete to the best of his or her knowledge. The 2015 Permit now requires operators to conduct an Annual Comprehensive Facility Compliance Evaluation ("Annual Evaluation") that evaluates the effectiveness of current BMPs and the need for additional BMPs based on visual observations and sampling and analysis results. *See* 2015 Permit, § XV.

28. The General Permit does not provide for any mixing zones by dischargers. The General Permit does not provide for any receiving water dilution credits to be applied by dischargers.

Basin Plan

29. The Regional Board has identified beneficial uses of the San Francisco Bay region's waters and established water quality standards for Pacheco Creek, Suisun Bay, the Carquinez Strait, San Pablo Bay, and San Francisco Bay in the "Water Quality Control Plan for the San Francisco Bay Basin," generally referred to as the "Basin Plan."

30. The beneficial uses of these waters include water contact recreation, noncontact water recreation, wildlife habitat, preservation of rare and endangered species, commercial and sportfishing, estuarine habitat, fish migration, cold freshwater habitat, and warm freshwater habitat. The noncontact water recreation use is defined as "[u]ses of water for recreational activities involving proximity to water, but not normally involving contact with water where water ingestion is reasonably possible. These uses include, but are not limited to, picnicking, sunbathing, hiking, beachcombing, camping, boating, tide pool and marine life study, hunting, sightseeing, or aesthetic enjoyment in conjunction with the above activities. Water quality considerations relevant to non-contact water recreation, such as hiking, camping, or boating, and those activities related to tide pool or other nature studies require protection of habitats and aesthetic features."

31. The Basin Plan includes a narrative toxicity standard which states that "[a]ll waters shall be maintained free of toxic substances in concentrations that are lethal or that produce other

detrimental responses in aquatic organisms."

32. The Basin Plan provides that "[s]urface waters shall not contain concentrations of chemical constituents in amounts that adversely affect any designated beneficial use."

33. The Basin Plan provides that "[w]aters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses."

34. The Basin Plan provides that "[t]he suspended sediment load and suspended sediment discharge rate of surface waters shall not be altered in such a manner as to cause nuisance or adversely affect beneficial uses."

35. The Basin Plan provides that "[w]aters shall not contain floating material, including solids, liquids, foams, and scum, in concentrations that cause nuisance or adversely affect beneficial uses."

36. The Basin Plan provides that the "pH shall not be depressed below 6.5 nor raised above 8.5."

37. The Basin Plan establishes a Marine Water Quality Objective ("WQO") for zinc of 0.09 mg/L (1-hour average).

38. The EPA has adopted a saltwater numeric water quality standards for zinc of 0.09 mg/L (Criteria Maximum Concentration – "CMC"). 65 Fed.Reg. 31712 (May 18, 2000) ("California Toxics Rule").

39. EPA has established Parameter Benchmark Values as objective guidelines for determining whether a facility discharging industrial storm water has implemented the requisite BAT and BCT. *See* Final National Pollutant Discharge Elimination System (NPDES) General Permit for Stormwater Discharges from Industrial Activities ("Multi-Sector Permit"), 80 Fed. Reg. 34,403, 34,405 (July 16, 2015); Multi-Sector Permit, 73 Fed. Reg. 56,572, 56,574 (Sept. 29, 2008); Multi-Sector Permit, 65 Fed. Reg. 64,746, 64,766-67 (Oct. 30, 2000).

40. EPA has established Parameter Benchmark Values as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite BAT and BCT. These benchmarks represent pollutant concentrations at which a storm water discharge could

potentially impair, or contribute to impairing, water quality, or affect human health from ingestion of water or fish. The following EPA benchmarks have been established for pollution parameters applicable to the Facility: pH – 6.0 - 9.0 standard units ("s.u."); total suspended solids ("TSS") – 100 mg/L; oil & grease ("O&G") – 15 mg/L; aluminum – 0.75 mg/L; iron – 1.0 mg/L; zinc – 0.26 mg/L; lead – 0.262 mg/L; chemical oxygen demand ("COD") – 120 mg/L; and biochemical oxygen demand ("BOD") – 30 mg/L.

41. The Numeric Action Levels ("NALs") in the 2015 Permit are derived from these benchmarks. The 2015 Permit incorporates annual NALs, which are derived from the 2008 MSGP benchmark values, and instantaneous maximum NALs, which are derived from a Water Board dataset. The following annual NALs have been established under the 2015 Permit: TSS – 100 mg/L; O&G – 15 mg/L; aluminum – 0.75 mg/L; iron – 1.0 mg/L; zinc – 0.26 mg/L; lead – 0.262 mg/L; COD – 120 mg/L; and BOD – 30 mg/L.[An exceedance of an annual NAL occurs when the average of all samples obtained for an entire facility during a single reporting year is greater than a particular annual NAL. The reporting year runs from July 1 to June 30. The 2015 Permit also establishes the following instantaneous maximum NALs: pH – 6.0-9.0 s.u.; TSS – 400 mg/L; and O&G – 25 mg/L. An instantaneous maximum NAL exceedance occurs when two or more analytical results from samples taken for any single parameter within a reporting year exceed the instantaneous maximum NAL value (for TSS and O&G) or are outside of the instantaneous maximum NAL range for pH. When a discharger exceeds an applicable NAL, it is elevated to "Level 1 Status," which requires a revision of the SWPPP and additional BMPs. If a discharger exceeds an applicable NAL during Level 1 Status, it is then elevated to "Level 2 Status." For Level 2 Status, a discharger is required to submit an Action Plan requiring a demonstration of either additional BMPs to prevent exceedances, a determination that the exceedance is solely due to non-industrial pollutant sources, or a determination that the exceedance is solely due to the presence of the pollutant in the natural background.

42. Section 505(a)(1) and Section 505(f) of the Act provide for citizen enforcement actions against any "person," including individuals, corporations, or partnerships, for violations of

NPDES permit requirements. 33 U.S.C. §§1365(a)(1) and (f), § 1362(5). An action for injunctive relief under the Act is authorized by 33 U.S.C. § 1365(a). Violators of the Act are also subject to an assessment of civil penalties of up to $51,570 for violations occurring after November 2, 2015; and up to $37,500 per day per violation occurring since October 28, 2011 up to and including November 2, 2015, pursuant to Sections 309(d) and 505 of the Act, 33 U.S.C. §§ 1319(d), 1365. *See also* 40 C.F.R. §§ 19.1 - 19.4.

V. STATEMENT OF FACTS

43. Defendant Allied Waste owns and/or operates the Facility, a 22-acre industrial site located within the City of Martinez.

44. Industrial activities at the Facility include with sorting of nonhazardous municipal solid waste; hauling, cleaning and maintenance of equipment and machinery; green waste tipping and processing; other activities related to transfer and recovery processes; sorting and baling; and vehicle and equipment maintenance.

45. The Facility falls within Standard Industrial Classification ("SIC") Codes 4953 and 4212.

46. Based on CBE's investigation, including a review of the Facility's Notice of Intent to Comply with the Terms of the Industrial General Permit ("NOI"), SWPPP, aerial photography, investigation, and CBE's information and belief, storm water is collected and discharged from the Facility through a series of channels that discharge via at least one outfall. The outfall discharges storm water and pollutants contained in that storm water into channels that discharge into Pacheco Creek, which flows into Suisun Bay, then into the Carquinez Strait, then into San Pablo Bay, and then into San Francisco Bay.

47. Plaintiff is informed and believes, and thereupon alleges that the storm water flows over the surface of the Facility where industrial activities occur, and areas where airborne materials associated with the industrial processes at the facility may settle onto the ground. Plaintiff is informed and believes, and thereupon alleges that storm water flowing over these areas collects suspended sediment, dirt, metals, and other pollutants as it flows towards the storm water outfall.

48. On information and belief, Plaintiff alleges that the majority of storm water discharges from the Facility contain storm water that is commingled with runoff from areas at the Facility where industrial processes occur.

49. On information and belief, Plaintiff alleges that there are insufficient structural storm water control measures installed at the Facility. Plaintiff is informed and believes, and thereupon alleges, that the management practices at the Facility are currently inadequate to prevent the sources of contamination described above from causing the discharge of pollutants to waters of the United States. The Facility lacks sufficient structural controls such as grading, berming, roofing, containment, or drainage structures to prevent rainfall and storm water flows from coming into contact with exposed areas of contaminants. The Facility lacks sufficient structural controls to prevent the discharge of water once contaminated. The Facility lacks adequate storm water pollution treatment technologies to treat storm water once contaminated.

50. Since at least November 30, 2012, Defendant has taken samples or arranged for samples to be taken of storm water discharges at the Facility. The sample results were reported in the Facility's Annual Reports submitted to the Regional Board. Defendant certified each of those Annual Reports pursuant to the General Permit.

51. In Annual Reports and storm water sampling results submitted to the Regional Board for the past five years, the Facility has consistently reported high pollutant levels from its storm water sampling results.

52. The Facility has reported numerous discharges in excess of narrative and numeric water quality standards established in the Basin Plan. These observations have thus violated narrative and numeric water quality standards established in the Basin Plan and have thus violated Discharge Prohibition A(2) and Receiving Water Limitations C(1) and C(2) of the 1997 Permit; Discharge Prohibitions III(C) and III(D) and Receiving Water Limitations VI(A) and VI(B) of the 2015 Permit; and are evidence of ongoing violations of Effluent Limitation B(3) of the 1997 Permit and Effluent Limitation V(A) of the 2015 Permit.

53. The levels of zinc in storm water detected by the Facility have exceeded the WQO

and CMC for zinc of 0.09 mg/L. For example, on February 18, 2016, the level of zinc measured from the Facility's storm water outfall was 1.1 mg/L. That level of zinc is over 12 times the WQO and CMC for zinc. Defendant also measured levels of zinc in excess of 0.09 mg/L in storm water discharged from the Facility on January 4, 2017; and November 24, 2015.

54. The levels of zinc in storm water detected by the Facility have exceeded the benchmark value and annual NAL for zinc of 0.26 mg/L established by EPA and the State Board, respectively. For example, on February 18, 2016, the level of zinc measured by Defendant from its outfall was 1.1 mg/L. That level of zinc is over four times the benchmark value and annual NAL for zinc. Defendant also measured levels of zinc in excess of 0.75 mg/L on November 24, 2015.

55. The levels of TSS in storm water detected by the Facility have exceeded the benchmark value and annual NAL for TSS of 100 mg/L established by EPA and the State Board, respectively, and the instantaneous NAL value for TSS of 400 mg/L established by the State Board. For example, on February 18, 2016, the level of TSS measured by Defendant at its outfall was 980 mg/L. That level of TSS is nearly 10 times the benchmark value and annual NAL for TSS. Defendant also measured levels of TSS in excess of 100 mg/L in nearly every storm water discharge measured at the Facility for the past five years, including January 4, 2017; November 24, 2015; November 9, 2015; February 6, 2015; December 11, 2014; April 1, 2014; February 26, 2014; and November 30, 2012.

56. The levels of iron in storm water detected by the Facility have exceeded the benchmark value and annual NAL for iron of 1 mg/L established by EPA and the State Board, respectively. For example, on February 18, 2016, the level of iron measured by Defendant from its outfall was 40 mg/L. That level of iron is 40 times the benchmark value and annual NAL for iron. Defendant also has measured levels of iron in excess of 1 mg/L in nearly every storm water discharge measured at the Facility for the past five years, including January 4, 2017; November 24, 2015; November 9, 2015; February 6, 2015; December 11, 2014; April 1, 2014; February 26, 2014; and November 30, 2012.

57. The levels of aluminum in storm water detected by the Facility have exceeded the

benchmark value and annual NAL for aluminum of 1 mg/L established by EPA and the State Board, respectively. For example, on February 18, 2016, the level of aluminum measured by Defendant from its outfall was 25 mg/L. That level of aluminum is over 33 times the benchmark value and annual NAL for aluminum. Defendant also measured levels of aluminum in excess of 0.75 mg/L on January 4, 2017; and November 24, 2015.

58. The levels of COD in storm water detected by the Facility have exceeded the benchmark value and annual NAL for COD of 120 mg/L established by EPA and the State Board, respectively. For example, on February 6, 2015, the level of COD measured by Defendant from its outfall was 1100 mg/L. That level of COD is nearly 10 times the benchmark value and annual NAL for COD. Defendant also has measured levels of COD in excess of 120 mg/L in nearly every storm water discharge measured at the Facility for the past five years, including January 4, 2017; February 18, 2016; November 24, 2015; November 9, 2015; December 11, 2014; April 1, 2014; February 26, 2014; and November 30, 2012.

59. The levels of BOD in storm water detected by the Facility have exceeded the benchmark value and annual NAL for BOD of 30 mg/L established by EPA and the State Board, respectively. For example, on February 6, 2015, the level of BOD measured by Defendant from its outfall was 540 mg/L. That level of BOD is 18 times the benchmark value and annual NAL for BOD. Defendant also measured levels of BOD in excess of 120 mg/L on April 1, 2014; February 26, 2014; and November 30, 2012.

60. The levels of pH in storm water detected by the Facility have been outside the acceptable range of 6.5 – 8.5 established by the Basin Plan for pH. On February 6, 2015, the level of pH measured from the Facility's storm water outfall was 6.07.

61. On information and belief, CBE alleges that during the 2012-2013 wet season, Defendant only collected and analyzed one of its required two storm water discharge samples.

62. On information and belief, CBE alleges that Defendant failed to collect and analyze any storm water discharge samples during the first half of the 2016-2017 reporting year.

63. On information and belief, CBE alleges that Defendant failed to conduct monthly

visual observations of storm water discharges during the following months: April 2012; May 2012; January 2013; February 2013; April 2013; November 2013; December 2013; January 2014; February 2014; March 2014; October 2014; November 2014; February 2015; April 2015; and May 2015.

64. On information and belief, CBE alleges that aluminum, zinc, COD, and BOD are pollutants likely to be present in the Facility's storm water discharges in significant quantities and that those pollutants have been present in CCTS's storm water discharges during the past five years.

65. On information and belief, CBE alleges that CCTS did not analyze its storm water discharges for aluminum and zinc prior to the 2015-2016 reporting year.

66. On information and belief, CBE alleges that since February 6, 2015, Defendant has failed to analyze its storm water discharges for BOD.

67. On information and belief, CBE alleges that Defendant failed to analyze its November 9, 2015 storm water discharge sample for aluminum, lead, COD, and zinc.

68. On information and belief, CBE alleges that Defendant has consistently failed to comply with Section B(14) of the 1997 Permit, and Section XV of the 2015 Permit, by failing to complete a proper ACSCE Report as well as an Annual Evaluation for the Facility.

69. On information and belief, CBE alleges that since at least March 16, 2012, Defendant has failed to implement BAT and BCT at the Facility for their discharges of pH, TSS, iron, aluminum, zinc, COD, BOD, and other potentially un-monitored pollutants. Effluent Limitation B(3) of the 1997 Permit and Effluent Limitation V(A) of the 2015 Permit requires that Defendant implement BAT for toxic and nonconventional pollutants and BCT for conventional pollutants by no later than October 1, 1992. As of the date of this Complaint, Defendant has failed to implement BAT and BCT.

70. On information and belief, CBE alleges that since at least March 16, 2012, Defendant has failed to implement an adequate SWPPP for the Facility. CBE is informed and believes, and thereupon alleges, that the SWPPP prepared for the Facility does not set forth site-specific best management practices for the Facility that are consistent with BAT or BCT for the Facility. CBE is

informed and believes, and thereupon alleges, that the SWPPP prepared for the Facility does not comply with the requirements of Section X(H) of the 2015 Permit. The SWPPP also fails to identify and implement advanced BMPs that are not being implemented at the Facility because they do not reflect best industry practice considering BAT/BCT. According to information available to CBE, Defendant's SWPPP has not been evaluated to ensure its effectiveness and revised where necessary to further reduce pollutant discharges. CBE is informed and believes, and thereupon alleges, that the SWPPP does not include each of the mandatory elements required by the General Permit.

71. Information available to CBE indicates that as a result of these practices, storm water containing excessive pollutants is being discharged during rain events into Pacheco Creek, which flows into Suisun Bay, then into the Carquinez Strait, then into San Pablo Bay, and then into San Francisco Bay.

72. CBE is informed and believes, and thereupon alleges, that Defendant has failed and continues to fail to alter the Facility's SWPPP and site-specific BMPs consistent with the General Permit.

73. Information available to CBE indicates that Defendant has not fulfilled the requirements set forth in the General Permit for discharges from the Facility due to the continued discharge of contaminated storm water. CBE is informed and believes, and thereupon alleges, that all of the violations alleged in this Complaint are ongoing and continuing.

VI. *CLAIMS FOR RELIEF*

FIRST CAUSE OF ACTION
Failure to Implement the Best Available and Best Conventional Treatment Technologies (Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)

74. CBE re-alleges and incorporates all of the preceding paragraphs as if fully set forth herein.

75. The General Permit's SWPPP requirements and Effluent Limitation B(3) of the 1997 Permit and Effluent Limitation V(A) of the 2015 Permit require dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and

nonconventional pollutants and BCT for conventional pollutants. Defendant has failed to implement BAT and BCT at the Facility for its discharges of pH, TSS, iron, aluminum, zinc, COD, BOD, and other potentially un-monitored pollutants in violation of Effluent Limitation B(3) of the1997 Permit and Effluent Limitation V(A) of the 2015 Permit.

76. Each day since at least March 16, 2012, that Defendant has failed to develop and implement BAT and BCT in violation of the General Permit is a separate and distinct violation of the General Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a).

77. Defendant has been in violation of the BAT/BCT requirements every day since at least March 16, 2012. Defendant continues to be in violation of the BAT/BCT requirements each day that they fail to develop and fully implement BAT/BCT at the Facility.

SECOND CAUSE OF ACTION
Discharges of Contaminated Storm Water
in Violation of Permit Conditions and the Act
(Violations of 33 U.S.C. §§ 1311, 1342)

78. CBE re-alleges and incorporates all of the preceding paragraphs as if fully set forth herein.

79. Discharge Prohibition A(2) of the 1997 Permit and Discharge Prohibition III(C) of the 2015 Permit prohibit storm water discharges and authorized non-storm water discharges that cause or threaten to cause pollution, contamination, or nuisance. Receiving Water Limitation C(1) of the 1997 Permit and Receiving Water Limitation VI(B) of the 2015 Permit prohibit storm water discharges to any surface or ground water that adversely impact human health or the environment. Receiving Water Limitation C(2) of the 1997 Permit and Receiving Water Limitation VI(A) and Discharge Prohibition III(D) of the 2015 Permit prohibit storm water discharges that cause or contribute to an exceedance of any applicable water quality standards contained in Statewide Water Quality Control Plan or the applicable Regional Board's Basin Plan.

80. CBE is informed and believes, and thereupon alleges, that since at least March 16, 2012, Defendant has been discharging polluted storm water from the Facility in excess of applicable water quality standards in violation of Receiving Water Limitation C(2) of the 1997 Permit and

Receiving Water Limitation VI(A) and Discharge Prohibition III(D) of the 2015 Permit.

81. During every rain event, storm water flows freely over exposed materials, waste products, and other accumulated pollutants at the Facility, becoming contaminated with pH, zinc, and other potentially un-monitored pollutants at levels above applicable water quality standards. The storm water then flows untreated to Pacheco Creek, which flows into Suisun Bay, then into the Carquinez Strait, then into San Pablo Bay, and then into San Francisco Bay.

82. CBE is informed and believes, and thereupon alleges, that these discharges of contaminated storm water are causing or contributing to the violation of the applicable water quality standards in a Statewide Water Quality Control Plan and/or the applicable Regional Board's Basin Plan in violation of Receiving Water Limitation C(2) of the General Permit.

83. CBE is informed and believes, and thereupon alleges, that these discharges of contaminated storm water are adversely affecting human health and the environment in violation of Receiving Water Limitation C(1) of the General Permit.

84. Every day since at least March 16, 2012, that Defendant has discharged and continue to discharge polluted storm water from the Facility in violation of the General Permit is a separate and distinct violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a). These violations are ongoing and continuous.

THIRD CAUSE OF ACTION
Failure to Prepare, Implement, Review, and Update an Adequate Storm Water Pollution Prevention Plan (Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)

85. CBE re-alleges and incorporates all of the preceding paragraphs as if fully set forth herein.

86. The General Permit requires dischargers of storm water associated with industrial activity to develop and implement an adequate SWPPP no later than October 1, 1992.

87. Defendant has failed to develop and implement an adequate SWPPP for the Facility. Defendant's ongoing failure to develop and implement an adequate SWPPP for the Facility is evidenced by, *inter alia*, Defendant's failure to justify each minimum and advanced BMP not being

implemented.

88. Defendant has failed to update the Facility's SWPPP in response to the analytical results of the Facility's storm water monitoring.

89. Each day since March 16, 2012, that Defendant has failed to develop, implement and update an adequate SWPPP for the Facility is a separate and distinct violation of the General Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a).

90. Defendant has been in violation of the SWPPP requirements every day since March 16, 2012. Defendant continues to be in violation of the SWPPP requirements each day that it fails to develop and fully implement an adequate SWPPP for the Facility.

FOURTH CAUSE OF ACTION
Failure to Develop and Implement an Adequate Monitoring and Reporting Program
(Violation of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)

91. CBE re-alleges and incorporates all of the preceding paragraphs as if fully set forth herein.

92. The General Permit requires dischargers of storm water associated with industrial activity to have developed and be implementing a monitoring and reporting program (including, *inter alia*, sampling and analysis of discharges) no later than October 1, 1992.

93. Defendant has failed to develop and implement an adequate monitoring and reporting program for the Facility.

94. Defendant's ongoing failure to develop and implement an adequate monitoring and reporting program are evidenced by, *inter alia*, its failure to sample all required parameters at the Facility.

95. Each day since at least March 16, 2012, that Defendant has failed to develop and implement an adequate monitoring and reporting program for the Facility in violation of the General Permit is a separate and distinct violation of the General Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a). The absence of requisite monitoring and analytical results are ongoing and continuous violations of the Act.

VII. RELIEF REQUESTED

Wherefore, CBE respectfully requests that this Court grant the following relief:

a. Declare Defendant to have violated and to be in violation of the Act as alleged herein;

b. Enjoin Defendant from discharging polluted storm water from the Facility unless authorized by the 2015 Permit;

c. Enjoin Defendant from further violating the substantive and procedural requirements of the 2015 Permit;

d. Order Defendant immediately to implement storm water pollution control and treatment technologies and measures that are equivalent to BAT or BCT;

e. Order Defendant to immediately implement storm water pollution control and treatment technologies and measures that prevent pollutants in the Facility's storm water from contributing to violations of any water quality standards;

f. Order Defendant to comply with the Permit's monitoring and reporting requirements, including ordering supplemental monitoring to compensate for past monitoring violations;

g. Order Defendant to prepare a SWPPP consistent with the Permit's requirements and implement procedures to regularly review and update the SWPPP;

h. Order Defendant to provide CBE with reports documenting the quality and quantity of their discharges to waters of the United States and their efforts to comply with the Act and the Court's orders;

i. Order Defendant to pay civil penalties of up to $37,500 per day per violation for each violation of the Act since October 28, 2011, up to and including November 2, 2015, and up to $51,570 for violations occurring after November 2, 2015, pursuant to Sections 309(d) and 505(a) of the Act, 33 U.S.C. §§ 1319(d), 1365(a) and 40 C.F.R. §§ 19.1 - 19.4;

j. Order Defendant to take appropriate actions to restore the quality of waters impaired or adversely affected by their activities;

k. Award CBE's costs (including reasonable investigative, attorney, witness, compliance oversight, and consultant fees) as authorized by the Act, 33 U.S.C. § 1365(d); and,

l. Award any such other and further relief as this Court may deem appropriate.

Dated: May 15, 2017

Respectfully submitted,

By: */s/ Douglas J. Chermak*
Douglas J. Chermak
LOZEAU DRURY LLP
Attorneys for Communities for a Better Environment

EXHIBIT A

LOZEAU DRURY LLP
T 510.836.4200
F 510.836.4205
410 12th Street, Suite 250
Oakland, Ca 94607
www.lozeaudrury.com
doug@lozeaudrury.com

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

March 8, 2017

Donald W. Slager, President and Chief Executive Officer
Republic Services, Inc. / Allied Waste Systems, Inc.
18500 N. Allied Way
Phoenix, AZ 85054

Ritchie Granzella, Operations Manager
Achaya Kelapanda, Area Environmental Manager
Lochlin Caffey, Environmental Manager
Eric Fanning, Environmental Manager
Contra Costa Transfer Recovery Station
951 Waterbird Way
Martinez, CA 94553

VIA FIRST CLASS MAIL

CT Corporation System, Agent for Service of Process for Allied Waste Systems, Inc.
(Entity Number C1594086)
818 West Seventh Street, Ste. 930
Los Angeles, CA 90017

Re: Notice of Violations and Intent to File Suit under the Federal Water Pollution Control Act

Dear Messrs. Slager, Granzella, Kelapanda, and Caffey and Ms. Fanning:

I am writing on behalf of Communities for a Better Environment ("CBE") in regard to violations of the Clean Water Act (the "Act") that CBE believes are occurring at Allied Waste Systems, Inc.'s industrial facility located at 951 Waterbird Way in Martinez, California, which operates under the name Contra Costa Transfer Station ("Facility"). This letter is being sent to Allied Waste Systems, Inc., Contra Costa Transfer Station, Donald W. Slager, Ritchie Granzella, Achaya Kelapanda, Lochlin Caffey, and Erin Fanning as the responsible owners or operators of the Facility (all recipients are hereinafter collectively referred to as "CCTS").

This letter addresses CCTS's unlawful discharge of pollutants from the Facility into channels that discharge into Pacheco Creek, which flows into Suisun Bay, which flows into Carquinez Strait, which flows into San Pablo Bay, which flows into the San Francisco Bay. The Facility is discharging storm water pursuant to National Pollutant Discharge Elimination System ("NPDES") Permit No. CA S000001, State Water Resources Control Board ("State Board") Order No. 97-03-DWQ ("1997 Permit") as renewed by Order No. 2015-0057-DWQ ("2015 Permit"). The 1997 Permit was in effect between 1997 and June 30, 2015, and the 2015 Permit went into effect on July 1, 2015. As explained below, the 2015 Permit maintains or makes more stringent the same requirements as the 1997 Permit. As appropriate, CBE refers to the 1997 and 2015 Permits in this letter collectively as the "General Permit." This letter notifies CCTS of ongoing violations of the substantive and procedural requirements of the General Permit at the Facility.

Section 505(b) of the Clean Water Act requires a citizen to give notice of intent to file suit sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Act (33 U.S.C. § 1365(a)). Notice must be given to the alleged violator, the U.S. Environmental Protection Agency ("EPA") and the State in which the violations occur.

As required by the Clean Water Act, this Notice of Violations and Intent to File Suit provides notice of the violations that have occurred, and continue to occur, at the Facility. Consequently, CBE hereby places CCTS on formal notice that, after the expiration of sixty days from the date of this Notice of Violations and Intent to Sue, CBE intends to file suit in federal court against CCTS under Section 505(a) of the Clean Water Act (33 U.S.C. § 1365(a)), for violations of the Clean Water Act and the General Permit. These violations are described more extensively below.

I. Background.

A. Communities for a Better Environment

CBE is a non-profit 501(c)(3) environmental justice organization, organized under the laws of California with its local office at 120 Broadway, Suite 2, Richmond, California 94804. Founded in California in 1978, CBE has approximately six thousand active members throughout the state, including many who live and/or recreate in and around Contra Costa, Solano and Alameda counties. CBE is dedicated to empowering low-income communities of color that seek a voice in determining the health of their air, water and land. At the behest of its members, for at least 30 years, CBE has sought to protect and promote water resources that are swimmable, drinkable, fishable, and sustainable. To further this mission, CBE actively seeks federal and state implementation of the Clean Water Act. Where necessary, CBE directly initiates enforcement actions on behalf of itself and its members.

Members of CBE reside in Contra Costa, Alameda and Solano counties, and near Pacheco Creek, San Pablo Bay, and the San Francisco Bay (hereinafter "Receiving Waters"). As

explained in detail below, the Facility continuously discharges pollutants into the Receiving Waters, in violation of the Clean Water Act and the General Permit. CBE members use the Receiving Waters to wade, bird watch, view wildlife, hike, bike, walk, and run. Additionally, CBE members use the waters to engage in educational and scientific study through pollution and habitat monitoring and restoration activities. The unlawful discharge of pollutants from the Facility into the Receiving Waters impairs CBE's members' use and enjoyment of these waters. Thus, the interests of CBE's members have been, are being, and will continue to be adversely affected by the Facility's failure to comply with the Clean Water Act and the General Permit.

B. The Contra Costa Transfer Station Facility

On information and belief, CBE alleges that the industrial processes that occur at the Facility include activities associated with sorting of nonhazardous municipal solid waste; hauling, cleaning and maintenance of equipment and machinery; green waste tipping and processing; other activities related to transfer and recovery processes; sorting and baling; and vehicle and equipment maintenance. The Facility's Storm Water Pollution Prevention Plan ("SWPPP") indicates that the Facility's scheduled operating hours are 4:00 am to 6:00 pm Monday through Friday and 6:00 am to 6:00 pm on Saturday and Sunday.

C. Discharges From the Facility

The Waste Discharger Identification Number ("WDID") for the Facility listed on documents submitted to the California Regional Water Quality Control Board, San Francisco Bay Region ("Regional Board") is 2 071015364. In its Notice of Intent to comply with the General Permit ("NOI"), CCTS certifies that the Facility is classified under Standard Industrial Classification ("SIC") codes 4953 and 4212. The NOI indicates that the Facility covers an area of 22 acres. The Facility collects storm water through a system of storm drains and surface flow, and discharges it through at least one outfall. On information and belief, CBE alleges the outfall contains storm water that is commingled with run off from the Facility from areas where industrial processes occur. Storm water discharged from the Facility flows into channels that discharge into Pacheco Creek, which flows into Suisun Bay, then into the Carquinez Strait, then into San Pablo Bay, and then into San Francisco Bay.

D. Waters Receiving Facility's Discharges

With every significant rainfall event millions of gallons of polluted storm water originating from industrial operations such as the Facility pour into storm drains and local waterways. The consensus among agencies and water quality specialists is that storm water pollution accounts for more than half of the total pollution entering surface waters each year. Such discharges of pollutants from industrial facilities contribute to the impairment of downstream waters and aquatic dependent wildlife. These contaminated discharges can and must be controlled for the ecosystem to regain its health.

The Regional Board has identified beneficial uses of the San Francisco Bay region's waters and established water quality standards for Pacheco Creek, Suisun Bay, the Carquinez Strait, San Pablo Bay, and San Francisco Bay in the "Water Quality Control Plan for the San Francisco Bay Basin," generally referred to as the "Basin Plan." *See* http://www.waterboards.ca.gov/sanfranciscobay/basin_planning.shtml. The beneficial uses of these waters include water contact recreation, noncontact water recreation, wildlife habitat, preservation of rare and endangered species, commercial and sportfishing, estuarine habitat, fish migration, cold freshwater habitat, and warm freshwater habitat. The noncontact water recreation use is defined as "[u]ses of water for recreational activities involving proximity to water, but not normally involving contact with water where water ingestion is reasonably possible. These uses include, but are not limited to, picnicking, sunbathing, hiking, beachcombing, camping, boating, tide pool and marine life study, hunting, sightseeing, or aesthetic enjoyment in conjunction with the above activities. Water quality considerations relevant to non-contact water recreation, such as hiking, camping, or boating, and those activities related to tide pool or other nature studies require protection of habitats and aesthetic features." *Id.* at 2.1.16. Visible pollution, including visible sheens and cloudy or muddy water from industrial areas, impairs people's use of Pacheco Creek, Suisun Bay, and San Pablo Bay for water contact recreation and noncontact water recreation.

The Basin Plan establishes water quality standards for Suisun Bay, San Pablo Bay, and their tributaries. The Basin Plan includes a narrative toxicity standard which states that "[a]ll waters shall be maintained free of toxic substances in concentrations that are lethal or that produce other detrimental responses in aquatic organisms." *Id.* at 3.3.18. The Basin Plan provides that "[s]urface waters shall not contain concentrations of chemical constituents in amounts that adversely affect any designated beneficial use." *Id.* at 3.3.21. The Basin Plan provides that "[w]aters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses." *Id.* at 3.3.14. The Basin Plan provides that "[t]he suspended sediment load and suspended sediment discharge rate of surface waters shall not be altered in such a manner as to cause nuisance or adversely affect beneficial uses." *Id.* at 3.3.12. The Basin Plan provides that "[w]aters shall not contain floating material, including solids, liquids, foams, and scum, in concentrations that cause nuisance or adversely affect beneficial uses." *Id.* at 3.3.6. The Basin Plan provides that the "pH shall not be depressed below 6.5 nor raised above 8.5." *Id.* at 3.3.9.

The Basin Plan establishes a Marine Water Quality Objectives for zinc of 0.09 mg/L (1-hour average ("HA")). Basin Plan at Table 3-3. The EPA has adopted a saltwater numeric water quality standards for zinc of 0.09 mg/L (Criteria Maximum Concentration – "CMC"). 65 Fed.Reg. 31712 (May 18, 2000) ("California Toxics Rule" or "CTR").

The EPA 303(d) List of Water Quality Limited Segments lists Suisun Bay, the Carquinez Strait, and San Pablo Bay as impaired for chlordane, mercury, selenium, and PCBs, among other pollutants. *See* http://www.waterboards.ca.gov/water_issues/programs/tmdl/integrated2012.shtml.

The EPA has published benchmark levels as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite best available technology economically achievable ("BAT") and best conventional pollutant control technology ("BCT").[1] The following benchmarks have been established for pollutants discharged by CCTS: pH – 6.0 - 9.0 standard units ("s.u."); total suspended solids ("TSS") – 100 mg/L; oil and grease ("O&G") – 15 mg/L; aluminum – 0.75 mg/L; iron – 1.0 mg/L; zinc – 0.26 mg/L; lead – 0.262 mg/L; chemical oxygen demand ("COD") – 120 mg/L; and biochemical oxygen demand ("BOD") – 30 mg/L.

These benchmarks are reflected in the 2015 Permit in the form of Numeric Action Levels ("NALs"). The 2015 Permit incorporates annual NALs, which reflect the 2008 EPA Multi-Sector General Permit benchmark values, and instantaneous maximum NALs, which are derived from a Water Board dataset. The following annual NALs have been established under the 2015 Permit: TSS – 100 mg/L; O&G – 15 mg/L; aluminum – 0.75 mg/L; iron – 1.0 mg/L; zinc – 0.26 mg/L; lead – 0.262 mg/L; COD – 120 mg/L; and BOD – 30 mg/L. The 2015 Permit also establishes the following instantaneous maximum NALs: pH – 6.0 - 9.0 s.u.; TSS – 400 mg/L; and O&G – 25 mg/L.

II. Alleged Violations of the General Permit.

A. Discharges in Violation of the Permit

CCTS has violated and continues to violate the terms and conditions of the General Permit. Section 402(p) of the Act prohibits the discharge of storm water associated with industrial activities, except as permitted under an NPDES permit (33 U.S.C. § 1342) such as the General Permit. The General Permit prohibits any discharges of storm water associated with industrial activities or authorized non-storm water discharges that have not been subjected to BAT or BCT. Effluent Limitation B(3) of the 1997 Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. The 2015 Permit includes the same effluent limitation. *See* 2015 Permit, Effluent Limitation V(A). BAT and BCT include both nonstructural and structural measures. 1997 Permit, Section A(8); 2015 Permit, Section X(H). Conventional pollutants are TSS, O&G, pH, biochemical oxygen demand, and fecal coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or nonconventional. *Id.*; 40 C.F.R. § 401.15.

In addition, Discharge Prohibition A(1) of the 1997 Permit and Discharge Prohibition III(B) of the 2015 Permit prohibit the discharge of materials other than storm water (defined as non-storm water discharges) that discharge either directly or indirectly to waters of the United States. Discharge Prohibition A(2) of the 1997 Permit and Discharge Prohibition III(C) of the

[1] The Benchmark Values can be found at http://www.epa.gov/npdes/pubs/msgp2008_finalpermit.pdf.

2015 Permit prohibit storm water discharges and authorized non-storm water discharges that cause or threaten to cause pollution, contamination, or nuisance.

Receiving Water Limitation C(1) of the 1997 Permit and Receiving Water Limitation VI(B) of the 2015 Permit prohibit storm water discharges and authorized non-storm water discharges that adversely impact human health or the environment. Receiving Water Limitation C(2) of the 1997 Permit and Receiving Water Limitation VI(A) and Discharge Prohibition III(D) of the 2015 Permit also prohibit storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of any applicable water quality standards. The General Permit does not authorize the application of any mixing zones for complying with Receiving Water Limitation C(2) of the 1997 Permit and Receiving Water Limitation VI(A) of the 2015 Permit. As a result, compliance with this provision is measured at the Facility's discharge monitoring locations.

CCTS has discharged and continues to discharge storm water with unacceptable levels of pH, TSS, iron, aluminum, zinc, COD, and BOD in violation of the General Permit. CCTS's sampling and analysis results reported to the Regional Board confirm discharges of specific pollutants and materials other than storm water in violation of the Permit provisions listed above. Self-monitoring reports under the Permit are deemed "conclusive evidence of an exceedance of a permit limitation." *Sierra Club v. Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988).

The following discharges of pollutants from the Facility have contained measurements of pollutants in excess of the applicable numerical water quality standards. They have thus violated Discharge Prohibitions A(2) and Receiving Water Limitations C(1) and C(2) of the 1997 Permit; Discharge Prohibitions III(C) and III(D) and Receiving Water Limitations VI(A), VI(B), and VI(C) of the 2015 Permit; and are evidence of ongoing violations of Effluent Limitation B(3) of the 1997 Permit, and Effluent Limitation V(A) of the 2015 Permit.

Sampling / Observation Date	**Parameter**	**Observed Concentration / Conditions**	**Basin Plan Water Quality Objective / CTR**	**Outfall (as identified by the Facility)**
2/6/2015	pH	6.07	6.5 – 8.5	Pump House Outfall
2/18/2016	Zinc	1.1 mg/L	0.09 mg/L (1-HA/ CMC)	MP-1
11/24/2015	Zinc	0.47 mg/L	0.09 mg/L (1-HA/ CMC)	MP-1

The information in the above table reflects data gathered from CCTS's self-monitoring during the 2014-2015 wet season as well as the 2015-2016 reporting year. CBE alleges that since at least March 8, 2012, and continuing through today, CCTS has discharged storm water contaminated with pollutants at levels that exceed one or more applicable water quality standards, including but not limited to each of the following:

- pH – 6.5 – 8.5 s.u.
- Zinc – 0.09 mg/L (1-HA/CMC)

The following discharges of pollutants from the Facility have violated Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the 1997 Permit; Discharge Prohibitions III(B) and III(C) and Receiving Water Limitations VI(A) and VI(B) of the 2015 Permit; and are evidence of ongoing violations of Effluent Limitation B(3) of the 1997 Permit and Effluent Limitation V(A) of the 2015 Permit.

Sampling Date	Parameter	Observed Concentration	EPA Benchmark Value /Annual NAL	Outfall (as identified by the Facility)
2/18/2016	Total Suspended Solids	980 mg/L	100 mg/L	MP-1
11/24/2015	Total Suspended Solids	460 mg/L	100 mg/L	MP-1
11/9/2015	Total Suspended Solids	330 mg/L	100 mg/L	MP-1
2/6/2015	Total Suspended Solids	810 mg/L	100 mg/L	Pump House Outfall
12/11/2014	Total Suspended Solids	260 mg/L	100 mg/L	Pump House Outfall
4/1/2014	Total Suspended Solids	1100 mg/L	100 mg/L	Stormwater 1
4/1/2014	Total Suspended Solids	400 mg/L	100 mg/L	Stormwater 2
2/26/2014	Total Suspended Solids	400 mg/L	100 mg/L	1 Storm Water
2/26/2014	Total Suspended Solids	1100 mg/L	100 mg/L	2 Storm Water
3/1/2012	Total Suspended Solids	300 mg/L	100 mg/L	A Stormwater-1
3/1/2012	Total Suspended Solids	350 mg/L	100 mg/L	B Stormwater - 2
2/18/2016	Iron	40 mg/L	1 mg/L	MP-1
11/24/2015	Iron	16 mg/L	1 mg/L	MP-1
11/9/2015	Iron	18 mg/L	1 mg/L	MP-1
2/6/2015	Iron	21 mg/L	1 mg/L	Pump House Outfall
12/11/2014	Iron	7.4 mg/L	1 mg/L	Pump House Outfall
4/1/2014	Iron	41 mg/L	1 mg/L	Stormwater 1
4/1/2014	Iron	12 mg/L	1 mg/L	Stormwater 2
2/26/2014	Iron	23 mg/L	1 mg/L	1 Storm Water
2/26/2014	Iron	25 mg/L	1 mg/L	2 Storm Water
11/30/2012	Iron	9.2 mg/L	1 mg/L	NW of Slope-A
11/30/2012	Iron	5.7 mg/L	1 mg/L	NE of Slope-B
3/1/2012	Iron	22 mg/L	1 mg/L	A Stormwater-1
3/1/2012	Iron	13 mg/L	1 mg/L	B Stormwater - 2
2/18/2016	Aluminum	25 mg/L	0.75 mg/L	MP-1
11/24/2015	Aluminum	9 mg/L	0.75 mg/L	MP-1
2/18/2016	Zinc	1.1 mg/L	0.26 mg/L	MP-1
11/24/2015	Zinc	0.47 mg/L	0.26 mg/L	MP-1
2/18/2016	Chemical Oxygen Demand	580 mg/L	120 mg/L	MP-1

11/24/2015	Chemical Oxygen Demand	670 mg/L	120 mg/L	MP-1
2/6/2015	Chemical Oxygen Demand	1100 mg/L	120 mg/L	Pump House Outfall
12/11/2014	Chemical Oxygen Demand	220 mg/L	120 mg/L	Pump House Outfall
4/1/2014	Chemical Oxygen Demand	640 mg/L	120 mg/L	Stormwater 1
4/1/2014	Chemical Oxygen Demand	470 mg/L	120 mg/L	Stormwater 2
2/26/2014	Chemical Oxygen Demand	720 mg/L	120 mg/L	1 Storm Water
2/26/2014	Chemical Oxygen Demand	1300 mg/L	120 mg/L	2 Storm Water
11/30/2012	Chemical Oxygen Demand	310 mg/L	120 mg/L	NW of Slope-A
11/30/2012	Chemical Oxygen Demand	420 mg/L	120 mg/L	NE of Slope-B
3/1/2012	Chemical Oxygen Demand	440 mg/L	120 mg/L	A Stormwater-1
3/1/2012	Chemical Oxygen Demand	560 mg/L	120 mg/L	B Stormwater - 2
2/6/2015	Biochemical Oxygen Demand	540 mg/L	30 mg/L	Pump House Outfall
4/1/2014	Biochemical Oxygen Demand	110 mg/L	30 mg/L	Stormwater 1
4/1/2014	Biochemical Oxygen Demand	220 mg/L	30 mg/L	Stormwater 2
2/26/2014	Biochemical Oxygen Demand	230 mg/L	30 mg/L	1 Storm Water
2/26/2014	Biochemical Oxygen Demand	630 mg/L	30 mg/L	2 Storm Water
11/30/2012	Biochemical Oxygen Demand	130 mg/L	30 mg/L	NW of Slope-A
11/30/2012	Biochemical Oxygen Demand	96 mg/L	30 mg/L	NE of Slope-B
3/1/2012	Biochemical Oxygen Demand	140 mg/L	30 mg/L	A Stormwater-1
3/1/2012	Biochemical Oxygen Demand	160 mg/L	30 mg/L	B Stormwater - 2

The information in the above table reflects data gathered from CCTS's self-monitoring during the 2011-2012, 2012-2013, 2013-2014, and 2014-2015 wet seasons as well as the 2015-

2016 reporting year. CBE notes that the Facility exceeded the annual NALs for TSS, iron, aluminum, zinc, and COD during the 2015-2016 reporting year. CBE alleges that since at least March 8, 2012, CCTS has discharged storm water contaminated with pollutants at levels that exceed the applicable EPA Benchmarks and NALs for TSS, iron, aluminum, zinc, COD, and BOD.

CBE's investigation, including its review of CCTS's SWPPP, CCTS's analytical results documenting pollutant levels in the Facility's storm water discharges well in excess of applicable water quality standards, and EPA benchmark values and NALs, indicates that CCTS has not implemented BAT and BCT at the Facility for its discharges of pH, TSS, iron, aluminum, zinc, COD, BOD, and potentially other pollutants in violation of Effluent Limitation B(3) of the 1997 Permit and Effluent Limitation V(A) of the 2015 Permit. CCTS was required to have implemented BAT and BCT by no later than October 1, 1992, or since the date the Facility opened. Thus, CCTS is discharging polluted storm water associated with its industrial operations without having implemented BAT and BCT.

In addition, the numbers listed above indicate that the Facility is discharging polluted storm water in violation of Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the 1997 Permit; Discharge Prohibitions III(C) and III(D) and Receiving Water Limitations VI(A), VI(B), and VI(C) of the 2015 Permit. CBE alleges that such violations also have occurred and will occur on other rain dates, including on information and belief every significant rain event that has occurred since March 8, 2012, and that will occur at the Facility subsequent to the date of this Notice of Violation and Intent to File Suit. Attachment A, attached hereto, sets forth each of the specific rain dates on which CBE alleges that CCTS has discharged storm water containing impermissible and unauthorized levels of pH, TSS, iron, aluminum, zinc, COD, BOD in violation of Section 301(a) of the Act as well as Effluent Limitation B(3), Discharge Prohibitions A(1) and A(2), and Receiving Water Limitations C(1) and C(2) of the 1997 Permit; and Effluent Limitation V(A), Discharge Prohibitions III(B) and III(C) and Receiving Water Limitations VI(A) and VI(B) of the 2015 Permit.[2]

Further, CBE puts CCTS on notice that 2015 Permit Effluent Limitation V(A) is a separate, independent requirement with which CCTS must comply, and that carrying out the iterative process triggered by exceedances of the NALs listed at Table 2 of the 2015 Permit does not amount to compliance with the 2015 Permit's Effluent Limitations, including CCTS's obligation to have installed BAT and BCT at the Facility. While exceedances of the NALs demonstrate that a facility is among the worst performing facilities in the State, the NALs do not represent technology-based criteria relevant to determining whether an industrial facility has

[2] The rain dates on the attached table are all the days when 0.1" or more rain was observed from a weather station in Concord located approximately 2.9 miles away from the Facility. The data was downloaded via http://ipm.ucanr.edu/calludt.cgi/WXDESCRIPTION?STN=CONCORD.A. (Last accessed on March 8, 2017).

implemented BMPs that achieve BAT/BCT.[3] Finally, even though CCTS has submitted an Exceedance Response Action Plan pursuant to Section XII of the 2015 Permit, the violations of Effluent Limitation V(A) described in this Notice Letter are ongoing.

These unlawful discharges from the Facility are ongoing. Each discharge of storm water containing any of these pollutants constitutes a separate violation of the General Permit and the Act. Each discharge of storm water constitutes an unauthorized discharge of pH, TSS, iron, aluminum, zinc, COD, BOD, and polluted storm water associated with industrial activity in violation of Section 301(a) of the CWA. Each day that the Facility operates without implementing BAT/BCT is a violation of the General Permit. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, CCTS is subject to penalties for violations of the General Permit and the Act since March 8, 2012.

B. Failure to Develop, Implement, and/or Revise an Adequate Monitoring and Reporting Program for the Facility

The 1997 Permit requires facility operators to develop and implement an adequate Monitoring and Reporting Program before industrial activities begin at a facility. See 1997 Permit, § B(1). The 2015 Permit includes similar monitoring and reporting requirements. See 2015 Permit, § XI. The primary objective of the Monitoring and Reporting Program is to observe, detect and measure the concentrations of pollutants in a facility's discharge to ensure compliance with the General Permit's discharge prohibitions, effluent limitations, and receiving water limitations. An adequate Monitoring and Reporting Program therefore ensures that best management practices ("BMPs") are effectively reducing and/or eliminating pollutants at a facility. An adequate Monitoring and Reporting Program is evaluated and revised whenever appropriate to ensure compliance with the General Permit.

Section B of the 1997 Permit describes the visual monitoring requirements for storm water discharges. Facilities are required to make monthly visual observations of storm water discharges from all drainage areas (Section B(4)). Section B(7) requires that the visual observations must represent the "quality and quantity of the facility's storm water discharges from the storm event." The requirement to make visual observations of storm water discharges from each drainage area is continued in Section XI(A) of the 2015 Permit.

[3] The NALs are not intended to serve as technology-based or water quality-based numeric effluent limitations. The NALs are not derived directly from either BAT/BCT requirements or receiving water objectives. NAL exceedances defined in [the 2015] Permit are not, in and of themselves, violations of [the 2015] Permit." 2015 Permit, Finding 63, p. 11. The NALs do, however, trigger reporting requirements. *See* 2015 Permit, Section XII.

i. Failure to Collect and Analyze Required Storm Water Samples.

The 1997 Permit requires dischargers to collect storm water samples during the first hour of discharge from the first storm event of the wet season, and at least one other storm event during the wet season, from all storm water discharge locations at a facility. *See* 1997 Permit, § B(5). The 2015 Permit now mandates that facility operators sample during *four* (rather than two) storm events from all discharge locations over the course of the reporting year. *See* 2015 Permit, §§ XI(B)(2), (3). Storm water discharges trigger the sampling requirement under the 1997 Permit when they occur during facility operating hours and are preceded by at least three working days without storm water discharge. *See* 1997 Permit, § B(5)(b). A sample must be collected from each discharge point at the facility, and in the event that an operator fails to collect samples from the first storm event, the operators must still collect samples from two other storm events and "shall explain in the Annual Report why the first storm event was not sampled." *See* 1997 Permit, § B(5)(a). The Facility has repeatedly violated these monitoring requirements.

During the 2012-2013 wet season, CCTS only collected and analyzed one of its required storm water discharge samples. On information and belief, CBE alleges that CCTS failed to collect and analyze storm water discharges from a second sampling event. In addition, based on local precipitation data compared with past sampling events at the Facility, CBE alleges that the CCTS failed to collect and analyze storm water discharges on the following dates during the 2012-2013 wet season:

- October 31, 2012
- November 19, 2012
- November 16, 2012
- November 21, 2012
- December 21, 2012
- January 5, 2013
- January 23, 2013
- February 19, 2013
- March 6, 2013
- March 19, 2013
- March 30, 2013
- April 4, 2013

The above results in at least 1 violation of the General Permit. This violation of the General Permit is ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, CCTS is subject to penalties for violations of the General Permit and the Act's monitoring and sampling requirements since at least March 8, 2012.

ii. Failure to Conduct Required Visual Observations of Storm Water Discharges.

Section B of the 1997 Permit describes the visual monitoring requirements for storm water discharges. Facilities are required to make monthly visual observations of storm water discharges from all drainage areas (Section B(4)). Section B(7) requires that the visual observations must represent the "quality and quantity of the facility's storm water discharges from the storm event." The requirement to make monthly visual observations of storm water discharges from each drainage area is continued in Section XI(A) of the 2015 Permit.

On information and belief, CBE alleges that CCTS failed to conduct monthly visual observations of storm water discharges during numerous months during the past five years. On information and belief, based on precipitation data compared to the dates in which the Facility did conduct monthly visual observation of storm water discharges, as well as the Facility's own reporting, CBE alleges that CCTS failed to conduct monthly visual observations of storm water discharges at its storm water discharge locations during at least the following months:

- 2012 – January, February, March, April, May
- 2013 – January, February, April, November, December
- 2014 – January, February, March, October, November
- 2015 – February, April, May

Therefore, CBE alleges that CCTS failed to conduct monthly visual observations of storm water discharges at the Facility during those months. During many of those months, CCTS purported to make monthly visual observations of storm water discharges on days when a nearby weather station reported no rain, and CCTS failed to make monthly observations on other days of the month when rain was reported. During February 2014 and February 2015, CCTS made visual observations on days when it reported that there was no discharge but failed to make monthly visual observations during those same months when the Facility collected and analyzed storm water discharges.

The above results in at least 18 violations of the General Permit. These violations of the General Permit are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, CCTS is subject to penalties for violations of the General Permit and the Act's monitoring and sampling requirements since March 8, 2012.

iii. Failure to Analyze Discharges for Mandatory Parameters.

Under the 1997 Permit, facilities must analyze storm water samples for "toxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities." 1997 Permit, Section B(5)(c)(ii). Under the 2015 Permit, facilities must analyze storm water samples for "[a]dditional parameters identified by the Discharger on a facility-

specific basis that serve as indicators of the presence of all industrial pollutants identified in the pollutant source assessment." 2015 Permit, Section XI(B)(6)(c).

During the latter three sampling events of the 2015-2016 reporting year, CCTS analyzed its storm water discharges for aluminum and zinc and the concentrations it measured of each were sometimes significantly in excess of the average NAL values as well as the CMC set forth in the California Toxics Rule for zinc. Thus, on information and belief, CBE alleges that aluminum and zinc are pollutants likely to be present in CCTS's storm water discharges in significant quantities and that those pollutants have been present in CCTS's storm water discharges during the past five years. On information and belief, CBE alleges that CCTS has never otherwise analyzed its storm water discharges for aluminum and zinc. These failures to analyze for aluminum and zinc result in at least 22 violations of the General Permit.

In addition, during the 2011-2012, 2012-2013, 2013-2014, and 2014-2015 wet seasons, CCTS analyzed its storm water discharges for COD and BOD. CCTS's measurements for these parameters were almost entirely in excess of applicable average NAL and EPA Benchmark values for these parameters. However, CCTS failed to analyze its discharges during the 2015-2016 reporting year for BOD and failed to analyze its November 9, 2015 sample for BOD. Moreover, the Facility's SWPPP fails to mention these parameters as potential pollutants – it fails to mention BOD at all and indicates COD was inadvertently reported. These failures to analyze for BOD and COD result in at least 5 violations of the General Permit.

The above violations are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, CCTS is subject to penalties for violations of the General Permit and the Act's monitoring and sampling requirements since March 8, 2012.

C. Failure to Complete Annual Comprehensive Site Compliance Evaluation

The 1997 Permit, in relevant part, requires that the Annual Report include an Annual Comprehensive Site Compliance Evaluation Report ("ACSCE Report"). Section B(14). As part of the ACSCE Report, the facility operator must review and evaluate all of the BMPs to determine whether they are adequate or whether SWPPP revisions are needed. The Annual Report must be signed and certified by a duly authorized representative, under penalty of law that the information submitted is true, accurate, and complete to the best of his or her knowledge. The 2015 Permit now requires operators to conduct an Annual Comprehensive Facility Compliance Evaluation ("Annual Evaluation") that evaluates the effectiveness of current BMPs and the need for additional BMPs based on visual observations and sampling and analysis results. See 2015 Permit, § XV.

Information available to CBE indicates that CCTS has consistently failed to comply with Section B(14) of the 1997 Permit, and Section XV of the 2015 Permit. None of the Facility's ACSCE Reports provide an explanation of the Facility's failure to take steps to reduce or prevent high levels of pollutants observed in the Facility's storm water discharges. See 1997 Permit

Receiving Water Limitation C(3) and C(4) (requiring facility operators to submit a report to the Regional Board describing current and additional BMPs necessary to prevent or reduce pollutants causing or contributing to an exceedance of water quality standards); see also 2015 Permit § X(B)(1)(b). The failure to assess the Facility's BMPs and respond to inadequacies in the ACSCE Reports negates a key component of the evaluation process required in self-monitoring programs such as the General Permit. Instead, CCTS has not proposed any BMPs that properly respond to EPA benchmark and water quality standard exceedances, in violation of the General Permit.

CBE puts CCTS on notice that its failures to submit accurate and complete ACSCE Reports are violations of the General Permit and the CWA. CCTS is in ongoing violation of Section XV of the 2015 Permit every day the Facility operates without evaluating the effectiveness of BMPs and the need for additional BMPs. These violations are ongoing. Each of these violations is a separate and distinct violation of the General Permit and the CWA. CCTS is subject to civil penalties for all violations of the CWA occurring since at least March 8, 2012.

D. Failure to Prepare, Implement, Review and Update an Adequate Storm Water Pollution Prevention Plan

Under the General Permit, the State Board has designated the SWPPP as the cornerstone of compliance with NPDES requirements for storm water discharges from industrial facilities, and ensuring that operators meet effluent and receiving water limitations. Section A(1) and Provision E(2) of the 1997 Permit require dischargers to develop and implement a SWPPP prior to beginning industrial activities that meet all of the requirements of the 1997 Permit. The objective of the SWPPP requirement is to identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm water discharges and authorized non-stormwater discharges from the facility, and to implement BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges and authorized non-stormwater discharges. *See* 1997 Permit § A(2); 2015 Permit § X(C). These BMPs must achieve compliance with the General Permit's effluent limitations and receiving water limitations. To ensure compliance with the General Permit, the SWPPP must be evaluated and revised as necessary. 1997 Permit §§ A(9), (10); 2015 Permit § X(B). Failure to develop or implement an adequate SWPPP, or update or revise an existing SWPPP as required, is a violation of the General Permit. 2015 Permit Factsheet § I(1).

Sections A(3)-A(10) of the 1997 Permit set forth the requirements for a SWPPP. Among other requirements, the SWPPP must include: a pollution prevention team; a site map; a list of significant materials handled and stored at the site; a description of potential pollutant sources; an assessment of potential pollutant sources; and a description of the BMPs to be implemented at the facility that will reduce or prevent pollutants in storm water discharges and authorized non-stormwater discharges, including structural BMPs where non-structural BMPs are not effective. Sections X(D) – X(I) of the 2015 Permit set forth essentially the same SWPPP requirements as the 1997 Permit, except that all dischargers are now required to develop and implement a set of minimum BMPs, as well as any advanced BMPs as necessary to achieve BAT/BCT, which serve

as the basis for compliance with the 2015 Permit's technology-based effluent limitations. *See* 2015 Permit § X(H). The 2015 Permit further requires a more comprehensive assessment of potential pollutant sources than the 1997 Permit; more specific BMP descriptions; and an additional BMP summary table identifying each identified area of industrial activity, the associated industrial pollutant sources, the industrial pollutants, and the BMPs being implemented. *See* 2015 Permit §§ X(G)(2), (4), (5).

The 2015 Permit requires dischargers to implement and maintain, to the extent feasible, all of the following minimum BMPs in order to reduce or prevent pollutants in industrial storm water discharges: good housekeeping, preventive maintenance, spill and leak prevention and response, material handling and waste management, erosion and sediment controls, an employee training program, and quality assurance and record keeping. *See* 2015 Permit, § X(H)(1). Failure to implement all of these minimum BMPs is a violation of the 2015 Permit. *See* 2015 Permit Fact Sheet § I(2)(o). The 2015 Permit further requires dischargers to implement and maintain, to the extent feasible, any one or more of the following advanced BMPs necessary to reduce or prevent discharges of pollutants in industrial storm water discharges: exposure minimization BMPs, storm water containment and discharge reduction BMPs, treatment control BMPs, and other advanced BMPs. *See* 2015 Permit, § X(H)(2). Failure to implement advanced BMPs as necessary to achieve compliance with either technology or water quality standards is a violation of the 2015 Permit. *Id.* The 2015 Permit also requires that the SWPPP include BMP Descriptions and a BMP Summary Table. *See* 2015 Permit § X(H)(4), (5). A Facility's BMPs must, at all times, be robust enough to meet the General Permit's and 33 U.S.C. ¶ 1342(p)(3)(A)'s requirement that all discharges associated with industrial activities be subjected to BAT and BCT. 2015 Permit §§ V(A), I(A)(1), I(D)(31), I(D)(32); 1997 Permit, Effluent Limitation B(3), Receiving Water Limitation C(3).

The Facility's SWPPP fails to comply with the requirements of Section X(H) of the 2015 Permit. The SWPPP fails to implement and maintain the required minimum BMPs for material handling and waste management. The SWPPP fails to implement any advanced BMPs. The SWPPP fails to identify and justify each minimum BMP or applicable BMP not being implemented at the Facility because they do not reflect best industry practice considering BAT/BCT.

Most importantly, the Facility's storm water samples and discharge observations have consistently exceeded applicable water quality standards, EPA benchmarks and NALs, demonstrating the failure of its BMPs to reduce or prevent pollutants associated with industrial activities in the Facility's discharges. Despite these exceedances, CCTS has failed to sufficiently update and revise the Facility's SWPPP. The Facility's SWPPP has therefore never achieved the General Permit's objective to identify and implement proper BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges.

CBE puts CCTS on notice that it violates the General Permit and the CWA every day that the Facility operates with an inadequately developed, implemented, and/or revised SWPPP. These violations are ongoing, and CBE will include additional violations as information and data

become available. CCTS is subject to civil penalties for all violations of the CWA occurring since March 8, 2012.

III. Persons Responsible for the Violations.

CBE puts Allied Waste Systems, Inc., Contra Costa Transfer Station, Donald W. Slager, Ritchie Granzella, Achaya Kelapanda, Lochlin Caffey, and Erin Fanning on notice that they are the persons responsible for the violations described above. If additional persons are subsequently identified as also being responsible for the violations set forth above, CBE puts Allied Waste Systems, Inc., Contra Costa Transfer Station, Donald W. Slager, Ritchie Granzella, Achaya Kelapanda, Lochlin Caffey, and Erin Fanning on notice that it intends to include those subsequently identified persons in this action.

IV. Name and Address of Noticing Parties.

The name, address and telephone number of Communities for a Better Environment is as follows:

Andrés Soto, Richmond Community Organizer
Communities for a Better Environment
120 Broadway, Suite 2
Richmond, CA 94804
Tel. (510) 302-0430
andres@cbecal.org

V. Counsel.

CBE has retained legal counsel to represent it in this matter. Please direct all communications to:

Douglas J. Chermak
Michael R. Lozeau
Lozeau Drury LLP
410 12th Street, Suite 250
Oakland, California 94607
Tel. (510) 836-4200
doug@lozeaudrury.com
michael@lozeaudrury.com

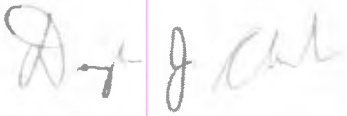
VI. Penalties.

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act subjects CCTS to a penalty of up to $37,500 per day per violation for all violations occurring since

October 28, 2011, up to and including November 2, 2015, and up to $51,570 for violations occurring after November 2, 2015. In addition to civil penalties, CBE will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d) (33 U.S.C. §1365(a) and (d)) and such other relief as permitted by law. Lastly, Section 505(d) of the Act (33 U.S.C. § 1365(d)), permits prevailing parties to recover costs and fees, including attorneys' fees.

CBE believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. CBE intends to file a citizen suit under Section 505(a) of the Act against CCTS and its agents for the above-referenced violations upon the expiration of the 60-day notice period. However, during the 60-day notice period, CBE would be willing to discuss effective remedies for the violations noted in this letter. If you wish to pursue such discussions in the absence of litigation, CBE suggests that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. CBE does not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,



Douglas J. Chermak
Lozeau Drury LLP
Attorneys for Communities for a Better Environment

SERVICE LIST – via certified mail

Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Thomas Howard, Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

Regional Administrator
U.S. EPA – Region 9
75 Hawthorne Street
San Francisco, CA, 94105

Bruce H. Wolf, Executive Officer II
San Francisco Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612

ATTACHMENT A

Rain Dates, Contra Costa Transfer Station, Martinez, CA

3/13/2012	1/30/2014	11/1/2015
3/14/2012	2/2/2014	11/2/2015
3/16/2012	2/5/2014	11/9/2015
3/17/2012	2/6/2014	11/15/2015
3/24/2012	2/7/2014	12/3/2015
3/25/2012	2/8/2014	12/10/2015
3/27/2012	2/9/2014	12/11/2015
3/31/2012	2/26/2014	12/13/2015
4/10/2012	2/28/2014	12/18/2015
4/12/2012	3/5/2014	12/20/2015
4/13/2012	3/26/2014	12/21/2015
4/25/2012	3/29/2014	12/28/2015
5/8/2012	3/31/2014	12/29/2015
6/4/2012	4/1/2014	1/4/2016
10/22/2012	4/4/2014	1/5/2016
10/31/2012	4/25/2014	1/6/2016
11/1/2012	9/25/2014	1/10/2016
11/9/2012	10/25/2014	1/13/2016
11/16/2012	10/31/2014	1/14/2016
11/17/2012	11/13/2014	1/15/2016
11/21/2012	11/19/2014	1/16/2016
11/30/2012	11/20/2014	1/17/2016
12/2/2012	11/26/2014	1/18/2016
12/21/2012	11/30/2014	1/19/2016
12/22/2012	12/2/2014	1/22/2016
12/23/2012	12/3/2014	1/29/2016
12/25/2012	12/6/2014	2/17/2016
1/5/2013	12/11/2014	2/18/2016
1/23/2013	12/12/2014	3/4/2016
2/19/2013	12/15/2014	3/5/2016
3/6/2013	12/16/2014	3/6/2016
3/19/2013	12/17/2014	3/7/2016
3/30/2013	12/19/2014	3/9/2016
3/31/2013	2/6/2015	3/10/2016
4/1/2013	2/7/2015	3/11/2016
4/4/2013	2/8/2015	3/12/2016
4/7/2013	4/7/2015	3/13/2016
11/19/2013	4/24/2015	4/8/2016
11/20/2013	4/25/2015	4/9/2016
11/21/2013	5/14/2015	4/10/2016
12/6/2013	6/10/2015	9/2/2016

ATTACHMENT A

Rain Dates, Contra Costa Transfer Station, Martinez, California

10/16/2016	2/6/2017
10/17/2016	2/7/2017
10/27/2016	2/8/2017
10/28/2016	2/9/2017
10/30/2016	2/16/2017
11/20/2016	2/17/2017
11/23/2016	2/19/2017
11/26/2016	2/20/2017
11/27/2016	2/21/2017
12/7/2016	3/5/2017
12/8/2016	3/6/2017
12/10/2016	
12/12/2016	
12/15/2016	
12/23/2016	
1/2/2017	
1/3/2017	
1/4/2017	
1/7/2017	
1/8/2017	
1/9/2017	
1/10/2017	
1/12/2017	
1/18/2017	
1/20/2017	
1/21/2017	
1/22/2017	
1/23/2017	
2/2/2017	
2/3/2017	
2/5/2017	